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OFFICIAL GAZETTE

GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

Note:- There is one Extraordinary issue to the Official Gazette, Series II No. 42 dated 16-01-2020 namely, Extraordinary dated 20-01-2020 from pages 757 to 758 regarding Order & Notifications from Department of Elections.

GOVERNMENT OF GOA

Department of Co-operation

Office of the Registrar of Co-operative Societies

Order

No. 3-1-Urban-TS-II/SZ/2017/RCS/Vol.I/4758

Read: Order No. 67-25-2009/INSP/Directv/RCS/2481 dated 01-12-2009.

The Government is pleased to withdraw the above read order.

By order and in the name of the Governor of Goa.

Vikas S. N. Gaunekar, Registrar & ex officio Joint Secretary (Co-operative Societies).

Panaji, 15th January, 2020.

Notification

No. 45/4/2004/TS/RCS/4881

Sub.: Appointment of Arbitrators under the Multi-State Co-operative Societies Act, 2002.

Read: 1) Notification No. L-11012/3/2002 L&M dated 24-02-2003 of the Jt. Secretary, Government of India, Ministry of Agriculture, Department of Agriculture and Co-operation, New Delhi.

2) Letter No. LMCS/HO/CEO/185/2019-20 dated 4-11-2019 received from the Chief Executive Officer of the Lokmanya Multipurpose Co-operative Society Ltd., Belgaum.

With reference to the above cited subject, I, *Vikas S. N. Gaunekar*, Registrar of Co-operative Societies, Goa, hereby appoint *Ms. Vandana M. Prabhu Tendulkar*, Retd. District Judge, as an Arbitrator of the Lokmanya Multipurpose Co-operative Society Ltd., under Multi-State Co-operative Societies Act, 2002 in terms of the Notification referred at Sr. No. 1 above, subject to the guidelines and conditions contained therein to decide the Arbitration cases and the dispute relating to organizational and legal matters, as shown against her name.

Sr. No.	Name of the Arbitrator	Designation	Address	Jurisdiction
1.	Ms. Vandana M. Prabhu Tendulkar	Advocate (Retd. District Judge)	R-103, Sumit Classic, Opp. Municipal Garden, Near Ponda Municipality, Ponda-Goa 403401	All ABN cases of Lokmanya Multipurpose Co-operative Society Ltd., coming under the jurisdiction of State of Goa.

This Notification shall come into force with immediate effect.

Vikas S. N. Gaunekar, Registrar (Co-operative Societies).

Panaji, 21st January, 2020.



Department of Environment

Order

No. 30-9-2018/STE-DIR/Part-I/1103

The Ministry of Environment, Forest and Climate Change, Government of India, New Delhi has notified six Eco-Sensitive Zones around Wildlife Protected Areas in Goa as follows:

Sr. No.	Ecologically Sensitive Areas (E.S.A.)	Notification No.	Date
1.	Bhagwan Mahaveer Wildlife Sanctuary and National Park	SO 221 (E)	23-01-2015.
2.	Mhadei Wildlife Sanctuary	SO 616 (E)	25-02-2015.
3.	Netravali Wildlife Sanctuary	SO 555 (E)	17-02-2015.
4.	Cotigao Wildlife Sanctuary	SO 608 (E)	24-02-2015.
5.	Bondla Wildlife Sanctuary	SO 615 (E)	25-01-2015.
6.	Dr. Salim Ali Bird Sanctuary	SO 607 (E)	24-02-2015.

Whereas, the Notification defines the activities that are prohibited, regulated and permeated in Eco-Sensitive Zones and also constituted a committee to monitor the compliance of the Notification; and

And whereas, the Notification requires the preparation of a Zonal Master Plan for effective management of Eco-Sensitive Zones for each protected area within a period of 2 years from the date of its publication for consideration and approval of MoEF & CC; and

And whereas, the Zonal Master Plan is to be prepared with involvement of concerned State Departments for integrating the ecological and environmental considerations in the Plan; and

And whereas, the State Level Eco-Sensitive Zone Monitoring Committee (SESZMC) Goa has in its meeting held on 29-05-2015 decided that as the land details are already available with the Town and Country Planning Department, the Chief Town Planner, shall get the draft Zonal Master Plan for Eco-Sensitive Zones prepared.

And whereas, the committee constituted vide order bearing No. 5/5/2015-FOR/177 dated 14-07-2015 issued by the Department of Forest has not been able to complete the task assigned to it within the stipulated time;

And whereas, the State Government has now decided to extend the term of the Committee to prepare the Zonal Master Plan falling in the respective District within a period of 3 months from the date of issue of this order for which purpose the following teams are constituted.

A) For North Goa District

1. Chief Town Planner (Admn.): Chairman.
2. Dy. Conservator of Forest (WL & ET) (North): Member.
3. Addl. Collector (North).
4. Director of Mines.
5. Director of Tourism.
6. Director of Environment.
7. Shri Milind Y. Gadgil (SESZMC) Member): Member.

B) For South Goa District

1. Chief Town Planner (Admn.): Chairman.
2. Dy. Conservator of Forest (WL & ET) (South): Member.
3. Addl. Collector (South).

4. Director of Mines.
5. Director of Tourism.
6. Director of Environment.
7. Shri Sandeep V. K. Azrekar (SESZMC) Member): Member.

The terms of reference of the Committees shall be as under:

- i. To prepare a Zonal Master Plan for each notified Eco-Sensitive Zone taking into account the guidelines provided in the Notification and also as per the local requirements.
- ii. Suggest best methods for management of Eco-Sensitive Zones.

The Committee shall submit the Zonal Master Plans within three months from the date of issue of this order.

By order and in the name of the Governor of Goa.

Johnson Bedy Fernandes, Director/ex officio Joint Secretary (Environment).

Porvorim, 16th January, 2020.

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Department of Labour

Order

No. 28/40/2019-LAB/32

Whereas, the Government of Goa is of the opinion that an industrial dispute exists between the management of M/s. Chowgule Industries Private Limited, opposite Damodar Temple, Fatorda, Margao, Goa and it's workman, Shri Anand B. Naik, Clerk-I, in respect of the matter specified in the Schedule hereto (hereinafter referred to as the "said dispute");

And whereas, the Government of Goa considers it expedient to refer the said dispute for adjudication.

Now, therefore, in exercise of the powers conferred by Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter referred to as the "said Act"), the Government of Goa hereby refers the said dispute for adjudication to the Labour Court-II of Goa at Panaji-Goa, constituted under Section 7(1) of the said Act.

SCHEDULE

- "(1) Whether the action of the management of M/s. Chowgule Industries Private Limited, opposite Damodar Temple, Fatorda, Margao,

Goa, in dismissing Shri Anand B. Naik, Clerk-I, with effect from 16-05-2005, is legal and justified?

- (2) If not, to what relief the workman is entitled?"

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 16th January, 2020.

Notification

No. 28/2/2020-LAB/33

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 23-12-2019 in reference No. IT/06/17 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 16th January, 2020.

IN THE INDUSTRIAL AND LABOUR COURT

GOVERNMENT OF GOA
AT PANAJI

(Before Mr. Vincent D'Silva, Hon'ble Presiding Officer)

Ref. No. IT/06/17

Workmen,
Rep. by the General Secretary,
Gomantak Mazdoor Sangh,
G-5, Macedo Appt.,
Tisk, Ponda, Goa-403 401. ... Workmen/Party I
V/s

M/s. Chowgule Industries Pvt. Ltd.,
Campal, Panaji-Goa. ... Employer/Party II

Workmen/Party I represented by Ld. Adv. Shri S. P. Gaonkar along with Shri P. Gaonkar.

Employer/Party II represented by Ld. Adv. Shri R. Kinnerkar.

AWARD

(Delivered on this the 23rd day of the month
of December of the year 2019)

By Order dated 17-3-2017, bearing No. 28/04/2017-LAB/142, the Government of Goa in exercise of powers conferred by Section 10(1)(d) of the

Industrial Disputes Act, 1947 (for short The Act), has referred the following dispute to this Tribunal for adjudication.

“(1) Whether the action of the management of M/s. Chowgule Industries Private Limited, Campal, Panaji, Goa, in transferring the services of S/Shri Nayadade Antao, Nilesh Sawant, Kiran Gadekar, Anand Naik, Audhut Samant, Sanjay Gaude and Dattaram Morajkar vide their Order dated 17-11-2016, is legal and justified?”

“(2) If not, what relief the workmen are entitled to?”

2. Upon receipt of the reference, IT/06/17 was registered. Notices were issued to both the parties under registered post, upon which both the parties were served. Party I thereafter filed a Claim statement at Exh. 3 and the Party II filed a Written statement at Exh. 5.

3. In short, the case of the Party I is that the Tribunal has passed an Award dated 13-7-2015 which was challenged by the Party II at Hon'ble High Court and Hon'ble Supreme Court and the same was dismissed. The Party I workmen thereafter through their union requested the management to implement the said award but the employer did not implement. The workmen who have joined the services after 2009 joined the Union in the month of November, 2016 and informed the management vide their letter dated 15-11-2016 and on receipt of the said letter, the officer of the Party II started threatening and harassing the workers as they have joined the Union. The Party I has also filed the claim under Section 33-C(1) of the Industrial Disputes Act and the appropriate authority issued a show cause notice for non implementation of the award. The Party I have also submitted a new Charter of demands for period of 4 years as it expired on 30-06-2012 and as the same was not resolved by the management, all the workers unanimously resolved in their general body meeting held on 4-11-2016 to initiate the agitation/ /strike against non implementation of the award and non settlement of the Charter of demands. However, the management started harassing and threatening the workers and specially the local committee.

4. The management after receipt of the notice of strike issued malafide transfer orders to the office bearers and active members of the union and Mr. Nilesh Sawant and Audhut Samant were illegally transferred to Canacona and Mr. Anand Naik and Mr. Sanjay Gaude were transferred to Karaswada,

Mapusa. There was no much work at Canacona and the workers were kept idle. The management also employed seven new technicians/mechanic on their place of work. The management also refused to grant leave to the unionized workers and issued show cause notices and other letters to create a record for initiating action against the union members. Mr. Anand Naik was transferred to Karaswada, Mapusa although he requested him to transfer to Canacona as he was coming from Karwar. The malafide transfer of the Party I workmen was only to victimize and harass the office bearers and active members of the Union. The management also issued charge sheets to eight workmen who had joined the Union in November, 2016 and terminated the services of more than nine workmen. The workmen have also submitted the claim for traveling allowance and daily bhatta as per the practice in force after they were transferred but they were not paid/reimbursed the said amount. The Party I workmen therefore are entitled for the reliefs prayed.

5. In the written statement, the Party II has contended that the Tribunal has no jurisdiction to entertain the reference as the transfer of the employees was in accordance with express terms of their appointment letters and the Court should not interfere with the exclusive managements function of deploying its employees in a manner it desires best, keeping in view the business exigencies. The management has a right to transfer the workmen from one place to another and the relocation was necessary due to repeated request from the said places, who were in dire need of senior and experienced staff and that it has not affected the individual service condition being presently enjoyed by each of them. The Union is trying to gain sympathy by unnecessary tagging the issue of transfer with alleged payment of arrears. The transfer of above mentioned employees was done entirely in accordance with terms and conditions of their appointment letters for exigencies of work. No workmen was harassed or threatened by the management. There was acute requirement of experienced manpower and hence the above mentioned employees were transferred. The Party I workmen are not entitled for any reliefs.

6. In the rejoinder at Exh. 6, the Party I has denied the case set up by the Party II in the written statement. The Party II thereafter filed their sur-rejoinder to the rejoinder of the Party I at Exh. 29.

7. Issues that came to be framed at Exh. 8 are as follows:

- (1) Whether the Party I prove that the action of the management in transferring of their services is illegal, unjustified and malafide?
- (2) Whether the Party II proves that the Tribunal has no jurisdiction to try and decide the reference?
- (3) What Relief? What Award?

8. In the course of evidence, the Party I examined Shri P. Gaonkar as a witness and produced on record a copy of letter dated 15-11-16 to the MD of Party II along with letters dated 10-8-16, 10-8-16 and 28-7-16 at Exh. 14 colly, copies of relocating of service letters of six workmen dated 16-11-16 and 17-11-16 at Exh. 15 colly, copies of letters to the six workmen dated 19-11-16 i.e. reply to transfer order dated 17-11-16 at Exh. 16 colly, a copy of letter dated 21-11-16 at Exh. 17, a copy of letter dated 22-11-16 from ALC to M.D. of Party II at Exh. 18, a copy of letter dated 23-11-16 from ALC to the M.D. of Party II at Exh. 19, a copy of minutes of the meeting held on 25-11-16 between the management and their workmen at Exh. 20, copies of letters to the two workmen, Viprav Vasta and Sankalp Nagvekar dated 15-12-2016 dated 14-12-16 at Exh. 21 colly, a copy of report of failure of conciliation proceedings dated 20-12-16 at Exh. 22, copies of two letters dated 5-1-17 to the Assistant Manager HR from the workmen Nilesh Sawant at Exh. 23 colly, a copy of letter dated 14-4-17 to the workman Nilesh Sawant at Exh. 24, a copy of letter dated 16-6-17 to Audhut Samant at Exh. 25, a copy letter dated 17-1-17 to Assistant Manager-HR dated 14-1-17 at Exh. 26, a copy of letter dated 17-7-17 to Assistant Manager-HR dated 16-6-17 at Exh. 27, a copy of Order dated 1-7-2016 of Apex Court in case No. IT/10/10 at Exh. 28. In cross examination, the Party II produced on record through the Party I witness, a copy of appointment letter of Shri Audhut Samant at Exh. 30, copies of salary slips of one Nilesh Sawant for the month of Oct. 2016 to Feb. 2017 at Exh. 30 A colly, copies of salary slips of workmen mentioned in the reference at Exh. 31 colly.

9. The Party I also examined Shri Nilesh Sawant as second witness and produced on record a copy of letter dated 3-1-1996 from Party II to Mr. Nilesh Sawant at Exh. 35, a copy of letter of appointment as 'Trainee' dated 10-1-1997 of Mr. Nilesh Sawant at Exh. 36, a copy of letter of appointment as 'Mechanic' dated 18-7-1998 of Mr. Nilesh Sawant along with annexure at Exh. 37 colly, a copy of letter dated 26-7-2000 from Party II to Mr. Nilesh

Sawant along with certificate at Exh. 38 colly, a copy of letter dated 10-8-2016 and 28-7-2016 from the workers of Party II to the Union at Exh. 39 colly, a copy of letter dated 16-8-2016 from the union to the Party II along with AD card at Exh. 40 colly, a copy of Notice of agitation dated 5-11-2016 from the Union to the Party II along with AD card at Exh. 41 colly, a copy of letter dated 15-11-2016 from the Union to the Party II along with AD card at Exh. 42 colly, a copy of show cause notice dated 12-12-2016 from the Party II to Mr. Sanjay Gaude at Exh. 43, a copy of show cause notice dated 6-4-2017 from the Party II to Mr. Sanjay Gaude at Exh. 44, copies of appointment letters of workmen alongwith terms and conditions at Exh. 45 colly. The Party I also examined Shri Kiran Gadekar as third witness and produced on record a copy of his appointment letter dated 17-6-2005 at Exh. 48, a copy of promotion letter dated 4-8-2008 at Exh. 49, a copy of pay slip for the month of July, 2018 at Exh. 50, a copy of pay slip for the month of June, 2012 at Exh. 51.

10. On the other hand, the Party II examined Shri Sujay Rao as witness and produced on record a copy of e-mail sent by Pranav Govekar dated 15-11-2016 at Exh. 54, a copy of e-mail sent by Girish Walavalkar dated 15-11-2016 at Exh. 55, a copy of e-mail sent by Omkar Desai dated 28-11-2016 at Exh. 56, a copy of letter dated 17-11-2016 along with transfer letter of Dattaram Morajkar dated 16-11-2016 at Exh. 57 colly, a copy of letter dated 17-11-2016 along with transfer letter of Sanjay V. Gaude dated 16-11-2016 at Exh. 58 colly, a copy of letter dated 17-11-2016 along with transfer letter of Audhut A. Samant dated 17-11-2016 at Exh. 59 colly, a copy of letter dated 17-11-2016 along with transfer letter of Anand S. Naik dated 16-11-2016 at Exh. 60 colly, a copy of letter dated 17-11-2016 along with transfer letter of Kiran Gadekar dated 17-11-2016 at Exh. 61 colly, a copy of letter dated 17-11-2016 along with transfer letter of Nilesh Sawant dated 16-11-2016 at Exh. 62 colly, a copy of letter dated 17-11-2016 along with transfer letter of Nayadade S. Antao dated 17-11-2016 at Exh. 63 colly, a copy of resignation letter dated 27-1-2017 of Nayadade S. Antao to GMS at Exh. 64, a copy of intimation of resignation letter dated 27-1-2017 by Nayadade Antao to the Management at Exh. 65. In cross examination, the Party I produced on record through the Party II witness, a copy order of Hon'ble Apex Court dated 29-4-2016 at Exh. 67, copies of explanations of Sanjay Gaude at Exh. 70 colly, a copy of list of workmen working at Fatorda since Nov. 2016 at Exh. 71, a copy of petition filed by the management before

Hon'ble High Court for implementation of Award at Exh. 72, a copy of order dated 30-7-2018 in W.P. No. 367/18 of Hon'ble High Court at Exh. 73 and a copy of Judgment dated 29-10-2018 of Hon'ble High Court passed in W.P. No. 367/18 at Exh. 74.

11. Heard arguments. Notes of Written arguments came to be placed on record by Party I as well as Party II.

12. I have gone through the records of the case and have duly considered the arguments advanced. My answers to the above issues are as follows:

- | | | |
|-------------|-----|---------------------|
| Issue No. 1 | ... | In the Affirmative. |
| Issue No. 2 | ... | In the Negative. |
| Issue No. 3 | ... | As per Final order. |

REASONS

Issue No. 1:

13. Learned Advocate Shri S. P. Gaonkar for the Party I has submitted that the transfers of the workmen, namely Nilesh Sawant, Audhut Samant and Dattaram Morajkar from Fatorda to Canacona and Kiran Gadekar, Anand Naik and Sanjay Gaude from Fatorda to Mapusa are illegal for the reasons such as (a) transfer to a place which was not in existence at the time of the appointment of the employee is impermissible; (b) transfer to a 'branch' in absence of a specific agreement or term that the company could transfer the workman from one branch to another is illegal; (c) transfer without administrative exigencies is illegal being malafide. He further submitted that the workers have been appointed much prior to starting of the workshops at Mapusa and Canacona and since beginning of their appointment have been working at Fatorda and it is not the condition of service between the parties that the workers could be transferred to a branch which was not existing at the time of their appointment and therefore such a transfer is illegal as not being in conformity with the conditions of service as held in the cases of (i) **Kundan Sugar Mills vs. Ziyauddin**, AIR 1960 SC 650 and (ii) **Management of M/s. Nippani Urban Co-operative Bank vs. Workmen**, 1992 LLR 725.

14. Per contra, Ld. Adv. Shri R. Kinnerkar for the Party II has submitted that there is a transfer clause in each of appointment letters of all the employees and the terms and conditions of appointment is expressly agreed and accepted by each employee and transfer of an employee is done in accordance with the expressed terms of appointment letters, which is incidence of service and that it is exclusive function of the management of deploying its employees in a manner it desires best, keeping in

view the business exigencies and as such the services of few employees were relocated to Canacona and Mapusa, which was necessary due to repeated requests from the said places. The witnesses examined by the Party I, namely Nilesh Sawant and Kiran Gadekar have admitted that there is a transfer clause in their appointment letters and that the service conditions prior to the transfer and service conditions after the transfer were same and not adversely affected. The other workmen did not bother even to lead evidence. Mr. Puti Gaonkar was neither an employee nor the Manager of the company and therefore his testimony cannot be relied upon. The Party II has examined their witness, Shri Sujay Rao who has stated that the transferred employees have already reported for work and are happily working at the transferred place and in support thereof, he relied upon the cases of (i) **Canara Banking Corporation, Ltd. vs. Vittal**, 1963 LLJ 354; (ii) **Dr. Jayesh Vasudevhai Trivedi vs. State of Gujarat and others**, 1990 LAB.I.C 713 (GUJ); (iii) **S. C. Karmakar vs. Tyre Corporation of India Ltd., and others**, 1990 I LLN 951 and (iv) **Engineering Workers Association vs M/s Radium Creations Ltd. and Anr**, in Writ Petition No. 2941 of 2016 on 15-3-2016.

15. In fine, the substratum of controversy is whether the transfer of Party I workmen, namely Nayadade Antao, Nilesh Sawant, Kiran Gadekar, Anand Naik, Audhut Samant, Sanjay Gaude and Dattaram Morajkar were in terms of letter of appointments due to exigencies of services or whether it was on account of harassment meted out to them being the members of the Union.

16. There is no dispute that the above referred workmen have been appointed much prior to the starting of the workshops at Mapusa and Canacona and that since beginning of the appointment have been working at Fatorda till they were transferred to Canacona/Mapusa. The Party I have produced on record appointment letters of Nilesh Sawant at Exh. 37 colly and of Kiran Gadekar at Exh. 48. The appointment letters of other workmen concerned in the reference have not been produced on record. Nonetheless, Shri Sujay Rao, management witness when shown the appointment letter along with General terms and conditions of service of Kiran Gadekar at Exh. 48 has admitted that the General terms and conditions of service are always attached to the appointment letter separately and that it is a practice to attach same General terms and conditions of service to all the appointments of Chowgule Group of Companies. The witness of Party I workmen, Shri Kiran Gadekar in the cross

has admitted that in terms of Clause 18 of the General terms and conditions, there is a transfer clause and that he has signed the appointment letter and terms and conditions of service and that he has not objected to it. There is no dispute that as per Clause 18 of the General terms and conditions of service attached to the appointment letter, an employee is liable to be transferred or loaned or deputed at the option of the company anywhere in India, in any of the existing or future establishments of the company/firm in the Chowgule group including transfer from one shift to another and/or from one department to another.

17. The Party I workmen are therefore bound by General terms and conditions appended to the appointment letter at Exh. 48. Shri Sujay Rao has admitted in the cross examination that Kiran Gadekar was appointed at their automobile division, Fatorda workshop at Fatorda and that Chowgule Industries Limited is a automobile division of Chowgule Group as per the said appointment letter and that Chowgule Industries Limited is a separate company of Chowgule Group and that the workshops at various places are not separate companies but they come under one company, Chowgule Industries Pvt. Ltd., which is a part of group of Chowgule Company. Clause 18 of the General terms and conditions of service indicates that the transfer is for group of companies of Chowgules i.e. one company to another company and not in the same branch or workshop in the same company. The word 'branch' is not present in the General terms and conditions, which means that transfer from one branch to another was not permissible under the terms and conditions of service.

18. All the workmen were specifically appointed at Fatorda branch/workshop. Clause 18 clearly stipulates that the services of the workmen could be transferred only in any existing or future establishment of the company in the Chowgule Group; one shift to another and one department to another. The transfer of the above workmen as per letters at Exh. 15 colly have not been made to an establishment in the Chowgule Group, not from one shift to another and not from one department to another, but from one branch/workshop to another, which is not contemplated under clause 18 of the terms and conditions of the services. It therefore clearly shows that the transfer from one branch/workshop to another was not the condition of service and therefore it is illegal. The expression branch/workshop in the transfer clause is absent in clause 18 of the General terms and conditions at Exh. 48, which clearly shows that the

transfer to another branch was not the condition of service and was never agreed upon by the parties and as such, the Party I workmen cannot be transferred to any branch/workshop without his/their consent under the guise of administrative exigencies or otherwise.

19. Admittedly, Shri Nilesh Sawant was confirmed to the permanent post of mechanic at Fatorda workshop on 30-1-1999 and he came to be transferred at Canacona workshop on 16-1-2016. Similarly, Shri Kiran Gadekar was promoted as Sr. Technician on 4-8-2008 at Exh. 49 and he came to be transferred at Mapusa workshop on 16-1-2016. Similarly, the other workers namely Anand Naik, Audhut Samant, Sanjay Gaude and Dattaram Morajkar were appointed at Fatorda much prior to the starting of workshops at Mapusa and Canacona and have since beginning of their appointment been working there. It is not the condition of service between the parties as per the General terms of service that the workers could be transferred to a branch which was not existing at the time of their appointment. There is no dispute that the Party I workmen concerned in the reference have been in continuous employment at Fatorda and were never transferred to any other workshops/branches. The Hon'ble Bombay High Court in the case of **H. N. Desai v/s. Bhore Industries Ltd., 2001 (4) LLN 1267** has held that in the absence of specific clause of transfer, the management has to produce evidence to show that the transfers were being effected in the past and it had become a practice. There is no such evidence on record adduced by the management and therefore the said transfers were illegal and void.

20. The appointment letters of Nilesh Sawant or Kiran Gadekar do not contain any transfer clause from one branch/workshop to another and therefore their services cannot be transferred. Moreover, the appointment letter of Nilesh Sawant specifically states that the appointment was being made at Fatorda workshop. There is also no evidence on record that in the past the workmen have been transferred from one branch to another. It is well settled that transferring a workman to a new branch which was not present during the time of appointment cannot be a condition of service and therefore the transfer is illegal as held in the case of **Management of M/s Nippani Urban Co-operative Bank v/s. Workmen, 1992 LLR 725**. Needless to mention, clause 18 of General terms of service does not entitle the management to transfer the employee from one branch/workshop to another of the same company and therefore such a transfer is illegal as not being in conformity with the

conditions of service. There is therefore no inherent right in an employer to transfer workmen to a new workplace which he chooses to start, subsequently without their consent as held in the case of **Tobu Industries v/s. Presiding Officer, Industrial Tribunal, 2009 LLR 475** and therefore transfer of Party I workmen from one branch to another was illegal.

21. Ld. Adv. Shri R. Kinnerkar for the Party II has submitted that the transfer of the employee is done in accordance with the expressed terms of their appointment letters and is an incidence of service and that it is exclusive function of the management of deploying its employee in a manner it desires best, keeping in view the business exigencies and in accordance with the terms and conditions of services of the Party I workmen, their services were relocated to Canacona and Mapusa within same city limits and the said relocation was necessary due to repeated requests from the said places who were in dire need of senior and experienced staff and that the documents produced by Party II including e-mails sent by the officer of the company namely Pranav, Girish, Omkar and others at Exh. 54 to 56 colly show that they were transferred due to exigencies of service and that the employees have already reported for work and are happily working at the transferred places and that by the said relocation, none of the existing service conditions are adversely affected in any manner. Shri Sujay Rao, witness of the management has reiterated the said facts.

22. It is thus seen that Learned Advocate Shri Kinnerkar for Party II has tried to justify the transfers of the Party I workmen as administrative exigencies, however no evidence has been led by the Party II nor was the actual need specified. The witnesses examined by the Party I have given the details of numbers of cars that have been serviced at Canacona and Mapusa workshops. They have also stated that 8 and 14 workers were already working at Canacona and Mapusa respectively and that they have been kept idle. Shri Sujay Rao has also admitted that he is not aware of how many cars are serviced at the said workshops nor he makes the assessment. There is no dispute that the relocation/transfer orders were issued by him and at the same time he is not aware of the nature of administrative exigencies, if any that existed at the time of relocation. There is no dispute that Shri Sujay has produced on record a list of 9 workmen at Exh. 71 who were subsequently appointed at Fatorda, which clearly establishes that more staff was required at Fatorda, itself.

23. The management has also produced on record the e-mails at Exh. 54 to 56 to support its case for transfer and that there were administrative exigencies, however Shri Sujay has admitted that the e-mails showing the requirement of the additional staff were sent only after the strike notice was given by the Union on 15-11-2016. There is no dispute that the Party I workmen along with others were demanding implementation of Award dated 13-7-2015 and the strike notice/joining of union dated 5-11-2016 and 15-11-2016 respectively at Exh 41 colly and 42 colly. Shri Sujay Rao has admitted that they have not implemented the said award. None of the persons who sent the e-mails including Pranav and others have been examined by the management. Shri Sujay Rao has also admitted that he does not make any examination of the actual requirement as per the number of cars that are serviced, which clearly goes to show that the management has made up the e-mails without their being any bonafide requirement for manpower, as rightly submitted by Ld. Adv. Shri S. P. Gaonkar for the Party I.

24. Moreover, Shri Nayadade Antao who was the President of the local committee chose to resign from the union in January, 2017 and immediately in February, 2017 his transfer order was revoked. The workman, namely Anand Naik is a native of Mazali, Karwar and that Canacona workshop was closer to that place and the management could have, if at all there was a need, transferred him to Canacona instead of Mapusa, which shows clear victimization of the workmen for union activities, only to harass them. It is also well settled that when a transfer was made with a malafide intention to scuttle the union, the transfer for trade union activities is malafide and illegal as held in the case of **Usha Workers Union v/s. Usha Martins Industries, 2003 LLR 760**. It is also well settled that when a transfer is not a condition of service, notice under Section 9-A of the Act is mandatory as held in the case of **Chennai Port and Dock Workers Congress vs. Union of India, 2003 LLN 406**. The management has transferred the Party I workmen to another branch albeit not a condition of service without notice under Section 9-A of the Act and therefore the said transfer order is illegal. The reliance placed by Ld. Adv. Shri Kinnerkar on the above citations are based on different facts altogether and therefore not relevant to the case at hand. The Party I having proved that the action of the management in transferring their services is illegal, unjustified and malafide, the above issue No. 1 is answered in the affirmative.

Issue No. 2:

25. The Party II has averred in the written statement that the Tribunal has no jurisdiction to entertain or determine the dispute as the transfer of an employee is in accordance with expressed terms of their appointment letters and that the Tribunal cannot interfere with the exclusive management function of deploying its employees as transfer is an incidence of service. Shri Sujay Rao has also reiterated the said facts. However, the dispute in relation to transfer of the workmen and its legality is an industrial dispute under Section 2(k) of the Act. The Party I workmen have led evidence to prove that the transfer by Party II as per the appointment letters was never the conditions of service and that the said transfer was malafide and unjustified and therefore, no case is made out by the Party II that the Tribunal has no jurisdiction to try the reference. Hence, the issue No. 2 is answered in the negative.

Issue No. 3:

26. There is no dispute as admitted by Shri Sujay Rao on page 13 of the cross examination that Nayadade Antao is presently working at Curchorem workshop and that he was transferred to Karaswada, Mapusa and he resigned from the Union on 27-1-2017 and that he was retransferred to Curchorem somewhere in February, 2017. He has also stated that after the transfer of Dattaram Morajkar, they have terminated his services. Shri Puti Gaonkar in his cross examination has admitted that the dispute was raised by the seven workmen and that the transfer of Nayadade Antao was withdrawn and he was posted near his native place after resignation and therefore they are not pressing for any reliefs in respect of Nayadade Antao. He also admitted that he has not made any efforts to delete the names of Nayadade Antao and Dattaram Morajkar because Nayadade is already posted to the place he wanted and that he has resigned from his union and that Dattaram was terminated and his matter is pending before the appropriate authority. Be that as it may, the transfer/relocation orders issued in respect of above two workmen are also illegal, although no relief can be granted to them for the aforesaid reasons.

27. The Party I workmen have averred that after joining the place of transfer, the workmen have submitted their claim for travelling expenses and daily bhatta as per the practice in force but they were not paid/reimbursed the same which has caused hardship and mental tension to the workmen. However, no documents in support

thereof have been produced on record. Exhibit 70 colly (cross) are the explanation to the show cause notice by Sanjay Gaude, wherein he has stated that they have not paid him the travelling expenses, however no details of bhatta charges or travelling allowance have been specified nor produced on record showing the amount due to them. There is therefore no evidence as regards to the amount of travelling expenses and bhatta charges claimed by Party I workmen and therefore they are not entitled for the said benefits. The Party I workmen having proved the issues cast on them; they are entitled for the reliefs claimed.

28. In the result, I pass the following:

ORDER

- (i) It is hereby held that the action of the management of M/s. Chowgule Industries Private Limited, Campal, Panaji, Goa, in transferring the services of S/Shri Nayadade Antao, Nilesh Sawant, Kiran Gadekar, Anand Naik, Audhut Samant, Sanjay Gaude and Dattaram Morajkar vide their Order dated 17-11-2016, is illegal and unjustified.
- (ii) The Party II employer is directed to cancel and set-aside the transfer order dated 17-11-2016 and post the workmen viz. Nilesh Sawant, Kiran Gadekar, Anand Naik, Audhut Samant and Sanjay Gaude to their original place of appointment at Fatorda.
- (iii) Inform the Government accordingly.

Sd/-
(Vincent D'Silva)
Presiding Officer,
Industrial Tribunal and
Labour Court.

Notification

No. 28/2/2020-LAB/34

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 17-12-2019 in reference No. IT/11/18 is hereby published as required under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

A. S. Mahatme, Under Secretary (Labour).

Porvorim, 16th January, 2020.

IN THE INDUSTRIAL TRIBUNAL AND LABOUR
COURT
GOVERNMENT OF GOA
AT PANAJI
(Before Mr. Vincent D'Silva, Hon'ble Presiding
Officer)

Ref. No. IT/11/18

Workmen,
Rep. by United Bargemen's
Association,
Damodar Polyclinic,
3rd Floor, Vasco-da-Gama,
Goa-403 802. ... Workmen/Party I

V/s

1. M/s. IP Marine Solutions
Pvt. Ltd., S-22, Ground Floor,
Sapana Terraces, Swatantra Path,
Vasco-da-Gama,
Goa-403 802. ... Employer/Party II(1)

2. Shri Anand V. Kumtekar
and 80 Ors. ... Workmen/Party II(2)

Workmen/Party I represented by Ld. Adv. Shri S.
Khandolkar.

Employer/Party II(1) ex-parte.

Workmen/Party II(2) represented by Ld. Adv.
Shri A. V. Nigalye.

AWARD

(Delivered on this the 17th day of the month
of December of the year 2019)

By Order dated 26-6-2018, bearing No. 28/13/
/2018-LAB/410, the Government of Goa in exercise
of powers conferred by Section 10 (1)(d) of the
Industrial Disputes Act, 1947 (for short The Act),
has referred the following dispute to the Tribunal
for adjudication.

"(1) Whether the action of the management of
M/s. IP Marine Solutions Private Limited,
Contractor to M/s. Vedanta Limited, in refusing
employment to the following Barge Crews, with
effect from 01-07-2017, is legal and justified?

Sr. No.	Name of the Barge Crew	Designation
1	2	3
1.	Abdul Hanan Shaikh	1st Class Master.
2.	Agustin Rodrigues	2nd Class Master.
3.	Conceicao B. Esteibeiro	Disp. 1st Class Master.
4.	Dyaneshwar S. Kerkar	Disp. 1st Class Master.

1	2	3
5.	Eknath Y. Phadte	2nd Class Master.
6.	Eulogio R. Barbosa	1st Class Master.
7.	Francisco Vaz	2nd Class Master.
8.	Golam Rasul Sardar	1st Class Master.
9.	Gyan Singh Verma	1st Class Master.
10.	Kanta A. Naik	1st Class Master.
11.	Luis L. Rodrigues	1st Class Master.
12.	Mohd. Shaukat Khan	Disp. 1st Class Master.
13.	Mohd. Tufail Khan	1st Class Master.
14.	Reginaldo Gonsalves	Disp. 1st Class Master.
15.	Sanjiv Bhosle	1st Class Master.
16.	Sateesh Naik	Disp. 1st Class Master.
17.	Sebastiao V. Carneiro	1st Class Master.
18.	Shyam V. Naik	2nd Class Master.
19.	Vidhyadhar K. Redkar	Disp. 1st Class Master.
20.	Vilas K. Yeram	2nd Class Master.
21.	Zacarius N. Fernandes	2nd Class Master.
22.	Abdul Lathif Shaikh	1st Class Driver.
23.	Biju V. Koshy	Disp. Inland Engineer.
24.	Bikash S. Mandal	Disp. Inland Engineer.
25.	Caetano L. Soares	1st Class Driver.
26.	Dinbandhu Hazra	Disp. Inland Engineer.
27.	Dudhnath K. Pale (Amar)	Disp. Inland Engineer.
28.	Ganoji Naik	1st Class Driver.
29.	Gobinda J. Mondal	Disp. Inland Engineer.
30.	Goutam Maitra	1st Class Driver.
31.	Govind H. Parab	Disp. Inland Engineer.
32.	Jaydeb Biswas	Disp. Inland Engineer.
33.	Joaquim Mascarenhas	Disp. Inland Engineer.
34.	Kashinath M. Sarkar	Disp. Inland Engineer.
35.	Khokhan Bar	1st Class Driver.
36.	Mahadev M. Das	Disp. Inland Engineer.
37.	Paulo Arthur Vaz	Disp. Inland Engineer.
38.	Pradeep G. Mokhardkar	Disp. Inland Engineer.
39.	Raghuraj S. Naik	Disp. Inland Engineer.
40.	Reginaldo B. Fernandes	Disp. Inland Engineer.

1	2	3	1	2	3
41.	Sebastiao Barreto	Disp. Inland Engineer.	93.	Sitaram G. Gawande	Oilman.
42.	Sankar Kumar Samai	Disp. Inland Engineer.	94.	Vishal P. Naik	Oilman.
43.	Ved Prakash Verma	1st Class Driver.	95.	Vitorino Mascarenhas	Oilman.
44.	Ambrutbala S. Girap	Sukhani.	96.	Ganaraj H. Tandel	Sailor.
45.	Anesh K. Sawant	Sukhani.	97.	Akshay Datekar	Sailor.
46.	Anton J. Soz	Sukhani.	98.	Akshay Naik	Sailor.
47.	Bhikaji N. Dhawade	Sukhani.	99.	Albert S. Marnekar	Sailor.
48.	Bindesh R. Kundaikar	Sukhani.	100.	Amit B. Vast	Sailor.
49.	Cajetan Fernandes	Sukhani.	101.	Anand S. Bhat	Sailor.
50.	Darshan Sawant	Sukhani.	102.	Anant A. Gawade	Sailor.
51.	Dattatray S. Kalangutkar	Sukhani.	103.	Anjan R. Dhoke	Sailor.
52.	Deepak D. Parab	Sukhani.	104.	Anthoni J. C. Sequeira	Sailor.
53.	Gurudas V. Naik	Sukhani.	105.	Anthony Gomes	Sailor.
54.	Hansraj V. Gaonkar	Sukhani.	106.	Antoniio Costa	Sailor.
55.	Isaac Lucas	Sukhani.	107.	Arun D. Morje	Sailor.
56.	Joseph C. Barbosa	Sukhani.	108.	Arvind S. Dicholkar	Sailor.
57.	Krishna S. Kurlle	Sukhani.	109.	Bhim Kumar Gupta	Sailor.
58.	Nazareth A. Diniz	Sukhani.	110.	Chandrabhas S. Pagi	Sailor.
59.	Paresh Patekar	Sukhani.	111.	Chandrakant D. Dhuri	Sailor.
60.	Prasad P. Bhosle	Sukhani.	112.	Chandrakant R. Sawant	Sailor.
61.	Rama J. Sadiye	Sukhani.	113.	Constancio Dias	Sailor.
62.	Santosh Datekar	Sukhani.	114.	Custodio Rebello	Sailor.
63.	Shivram N. Malvankar	Sukhani.	115.	David Z. D'Souza	Sailor.
64.	Sunil G. Sadiye	Sukhani.	116.	Deepak J. Sagekar	Sailor.
65.	Sunil L. Pednekar	Sukhani.	117.	Deepak Kotharkar	Sailor.
66.	Vilas R. Pednekar	Sukhani.	118.	Deepak Manjrekar	Sailor.
67.	Vishwanath V. Girap	Sukhani.	119.	Devanand U. Naik	Sailor.
68.	Aravind D. Dhuri	Oilman.	120.	Devendra G. Naik	Sailor.
69.	Ashok Kumar	Oilman.	121.	Devu Fati Shetgaonkar	Sailor.
70.	Bejami Manerker	Oilman.	122.	Dilkush S. Pagui	Sailor.
71.	Conceicao F. Fernandes	Oilman.	123.	Dinesh R. Naik	Sailor.
72.	Dipak Mokhardkar	Oilman.	124.	Gabriel F. Mascarenhas	Sailor.
73.	Domnic G. Marnekar	Oilman.	125.	Ganesh P. Sakate	Sailor.
74.	Gopichand B. Bhute	Oilman.	126.	Ghanshyam R. Pagi	Sailor.
75.	Hariday M. Sanyal	Oilman.	127.	Gopalkrishna S. Metri	Sailor.
76.	Jatin J. Amonkar	Oilman.	128.	Guarish M. Redkar	Sailor.
77.	Kalicharan Behera	Oilman.	129.	John A. M. Pereira	Sailor.
78.	Kashinath V. Naik	Oilman.	130.	Jose R. Fernandes	Sailor.
79.	Keshav P. Naik	Oilman.	131.	Krishnanand K. Pagi	Sailor.
80.	Khalil A. Shaikh	Oilman.	132.	Krishnanath V. Naik	Sailor.
81.	Kunal P. Pagui	Oilman.	133.	Lakshyant S. Naik	Sailor.
82.	Pandurang Mayekar	Oilman.	134.	Lokendra Singh	Sailor.
83.	Radesh B. Gab	Oilman.	135.	Machindranath V. Bhosle	Sailor.
84.	Radhakrishna S. Pagui	Oilman.	136.	Mahableshwar R. Sarang	Sailor.
85.	Pajbali Saroj	Oilman.	137.	Prabhakar P. Velip	Sailor.
86.	Raju B. Bhutewadkar	Oilman.	138.	Prakash B. Polaji	Sailor.
87.	Ravindra K. Gaude	Oilman.	139.	Pramod T. Kurlle	Sailor.
88.	Remmy M. Joseph	Oilman.	140.	Premanand V. Kumtekar	Sailor.
89.	Roseman A. Coutinho	Oilman.	141.	Rajendra S. Sadiye	Sailor.
90.	Sadanand B. Mapari	Oilman.	142.	Raju B. Metri	Sailor.
91.	Sandeep L. Pednekar	Oilman.	143.	Rama T. Pagi	Sailor.
92.	Sedrico L. Teixeira	Oilman.	144.	Rama V. Sawant	Sailor.
			145.	Ramchandra M. Toraskar	Sailor.
			146.	Ranganath S. Pagui	Sailor.

1	2	3
147.	Rintu Kumar Singh	Sailor.
148.	Rosario Raposo	Sailor.
149.	Rupesh C. Palyekar	Sailor.
150.	Sanjay G. Korkhankar	Sailor.
151.	Santosh J. Halankar	Sailor.
152.	Shankar W. Govekar	Sailor.
153.	Shantaram Pednekar	Sailor.
154.	Shanu S. Naik	Sailor.
155.	Shyama P. Mallick	Sailor.
156.	Somnath J. Thakkar	Sailor.
157.	Sujit Tholol	Sailor.
158.	Sunil B. Gaude	Sailor.
159.	Suresh B. Nagave	Sailor.
160.	Sushant R. Phadte	Sailor.
161.	Thomas P. Chacko	Sailor.
162.	Uday J. Chandekar	Sailor.
163.	Umesh B. Nagvekar	Sailor.
164.	Vasudev K. Kannai	Sailor.
165.	Vishnu S. Juvatkar	Sailor.
166.	Viswas G. Kelaskar	Sailor.
167.	Willyam Camil Rodrigues	Sailor.
168.	Xavier Anthony Vaz	Sailor.
169.	Yadunand D. Tari	Sailor.
170.	Soumen Tikka	Sailor.
171.	Anand V. Kumtekar	Sailor.
172.	Ghanshyam Bodra	Sailor.
173.	Harjeet Singh	Sailor.
174.	Kailashnath Pal	Sailor.
175.	Nitin M. Jawak	Sailor.
176.	Pradeep N. Kumtekar	Sailor.
177.	Sanjay H. Sarang	Sailor.
178.	Shambhu Rajwar	Sailor.
179.	Shivanand G. Phadte	Sailor.
180.	Giridhar Gauns	Sailor.
181.	Joni G. Kolhartkar	Sailor.
182.	Rupesh Dalvi	Sailor.
183.	Rajesh Dattekar	Sailor.
184.	Safikur Rahaman	Sukani.
185.	Prashant Bhosle	Sukani.
186.	Sushant P. Halankar	Sailor.
187.	Ganesh D. Halankar	Sailor.
188.	Deepak G. Halankar	Sailor.
189.	Rupesh G. Meta	Sailor.
190.	Ismail Shaikh	Sailor.

(2) If the answer to issue No. (1) above is in the negative, then, what relief the workmen are entitled to?"

2. Upon receipt of the reference, IT/11/18 came to be registered and notices were issued to both the parties under registered A.D. post. Upon their appearance, Party I filed a Claim statement at Exh. 14.

3. In short, the case of Party I is that that the Party I is representing the crew members who are employed by the Party II(1). The Party II(1) had been appointed by M/s. Vedanta Limited, formerly known as Sesa Sterlite Limited in January, 2015 for manning their several barges. The Party II had employed around 190 crew members from January, 2015 to man the barges, however, the Party II(1) forcibly asked the workmen on 1-7-2017 to disembark from their barges thereby refusing work without giving any notice. The Party I vide their representation dated 7-7-2017 raised an issue before the Assistant Labour Commissioner, Vasco-da-Gama in respect of 190 barge crew members/ /workmen employed by the Party II(1) on the illegal refusal of employment to their members w.e.f. 1-7-2017 and the matter was admitted in conciliation but ended in failure. The Party I had entered into several settlements regarding terms and conditions of work, pay scales, etc. in respect of crew members employed by them in running the barges. The said settlements are also binding on the agencies/contractors who have been awarded the contract of manning the barges. The settlement dated 9-2-2007 is valid and in force till date.

4. The Memorandum of Settlement was also signed on 12-3-2015 under Section 12(3) read with 18(3) of the Industrial Disputes Act between Sesa Sterlite Ltd. and Sesa Resources Ltd., representative of agency M/s. IP Marine Solutions Pvt. Ltd. and the representative of Bargemen's Association wherein it was agreed that in the event, the contract agency abandons the crew abruptly without payment of wages to its crew, the management shall be under obligations only for payment of such unpaid wages for the period of work done under the agency. All the crew members are the members of the Union. The Party II(1) is bound by the settlements. The Party I workmen have been providing uninterrupted services to the Party II(1). The Party II(1) was not providing wage slips/salary details to know whether their legitimate dues are included in the salary and after discussion it was realized that the Party II(1) was not paying agreed pay-scales, annual increment, compensation allowance, etc. The Party I workmen were putting up their legitimate demands in peaceful manner but the Party II(1) indulged in tactics of issuing letters mentioning irrelevant terms to avoid payments. The Party II(1) to avoid payment of legitimate dues and its arrears from the date of their joining, forcibly disembarked the Party I workmen from the barges without issuing any notices depriving them from job and livelihood w.e.f. 1-7-2017 causing great prejudice. The act of refusal of employment to 190 workmen is unilateral, unjust and illegal.

5. It is a matter of record that the notices sent to the Party II(1) returned with postal remarks 'Left, Returned to sender'. The Party I thereafter submitted a new address and the notice was duly served as per Exh. 11 by the Department of Post and accordingly an opportunity was given. It is also noticed that another registered letter was sent to the Director, IP Marine Solutions Ltd., Mumbai intimating the next date of hearing and the same was returned on 18-2-2019 with postal remarks 'Refused' and accordingly, the matter was ordered to be proceeded ex-parte against the Party II(1).

6. It is also a matter of record that certain sections of workers from Party I workmen filed an application through Ld. Adv. Shri A. V. Nigalye to represent them in the present matter and as Advocate for Party I had not objected, order was passed on 25-7-2019 allowing the said application for impleadment as necessary parties and the said section of workers consisting of 81 workers were impleaded as Party II(2).

7. The Party II(2) thereafter filed a written statement inter-alia contending that the present matter relates to illegal termination of 190 workmen by the management of the Party II(1) and the said dispute was raised by United Bargemen's Association on behalf of 190 workmen and after the reference was made by the Government, about 59 workmen separated themselves from United Bargemen's Association and formed a separate group of workmen and that more workmen joined and the said group now comprises of 81 workers who have filed a common wakalatnama. The said dispute was also raised by the workmen who are arraigned as Party II(2) in the cause title along with other workmen of Party I and that all 190 workmen of Party II(1) constituted one single group before the workers constituting Party II(2) disassociated from other workers and formed their separate group. The Party II(2) support, agitate and espouse the demands pertaining to the present dispute since they are also their demands. The action of Party II(1) of refusing employment to all the workmen is illegal and unjustified and in total breach and violation of provisions of Section 25-F of Industrial Disputes Act and that they are entitled to re-instatement in service with full back wages and other consequential benefits.

8. Issues that came to be framed at Exh. 8 are as follows:

- (1) Whether the Party I prove that the action of the Party II in refusing employment of Party I w.e.f. 01-07-2017 is illegal and unjustified?

- (2) Whether the Party I prove that they are entitled for reinstatement in services with full back wages and continuity in services with all other consequential benefits?

- (3) What relief? What Award?

9. In support of their claim, Party I examined Shri U. K. Nair and produced on record a copy of Union representation dated 07-07-2017 before ALC at Exh. 22, a copy of reference dated 26-06-2018 at Exh. 23, a copy of Settlement dated 09-02-2007 at Exh. 24, a copy of Memorandum of Settlement dated 12-03-2015 at Exh. 25, a copy of Memorandum of Settlement dated 11-01-1985 at Exh. 26, a copy of Memorandum of Settlement dated 26-02-1989 at Exh. 27, a copy of Memorandum of Settlement dated 23-12-1993 at Exh. 28, a copy of I. P. Marine Ltd. letter dated 30-11-2015 with date of joining at Exh. 29, a copy of Pay Slip of November, 2015 at Exh. 30, a copy of Pay Slip of March, 2016 at Exh. 31, a copy of Workmen's representation dated 06-07-2017 at Exh. 32, a copy of UBA letter dated 15-12-2016 to M/s IP Marine at Exh. 33, a copy of Appointment letter dated 16-11-2015 at Exh. 34, a copy of Appointment letter dated 25-03-2015 at Exh. 35, a copy of Appointment letter dated 01-11-2015 at Exh. 36, a copy of Workers' letter to UBA at Exh. 37. The Party II(2) also examined Shri Pradeep Mokhardkar and produced on record a copy of resolution dated 29-7-2018 at Exh. 46.

10. I have gone through the records of the case and have duly considered the arguments advanced. My answers with their findings and reasons thereof are as follows.

Issue No. 1	...	In the Negative.
Issue No. 2	...	In the Negative.
Issue No. 3	...	As per final order.

REASONS

Issue Nos. 1, 2 and 3:

11. Learned Advocate Shri. S. Khandolkar for the Party I and Ld. Adv. Shri A. V. Nigalye for the Party II(2) have submitted that the Party I workmen consisting crew of 190 were employed by the Party II(1) since 2015 for manning their several barges. The Union had entered into several settlements/ agreements regarding terms and conditions of work, pay-scales, consequential benefits and other welfare benefits with Goa Barge Owner's Association in respect of crew members employed by them in running the barges and the said settlements are binding on the agencies/contractor including Party II(1). The Party II(1) however was not providing wage slips/salary details and was

not paying pay-scales, annual increments and other benefits as per the agreed terms and instead of complying with the statutory obligations as per various settlements and to avoid payment of their dues and arrears, illegally disembarked all the 190 crew members w.e.f. 1-7-2017 in breach of Section 25-F of the Act and therefore, entitled for the reliefs claimed and in support thereof, they relied upon the cases of (i) **K. S. Ravindran vs. Branch Manager, New India Assurance Company Limited, (2015) 7 SCC 222** and (ii) **O. P. Bhandari vs. Indian Tourism Development Corporation Ltd. and others, AIR 1987 SC 111**.

12. The Party I has examined its Secretary Shri U. K. Nair, he has claimed that he is representing the crew members who are employed by M/s. IP Marine Solutions Pvt. Ltd., Vasco and that the Party II(1) has employed around 190 crew members from January, 2015 and that the union raised an issue before Assistant Labour Commissioner in respect of said members for illegally refusing the employment, however, no documents have been produced on record that the Party I workmen are being represented by the union viz. United Bargemen's Association and that the Party II(1) had employed 190 workmen who are their members. There is no resolution produced on record by Shri U. K. Nair authorizing the Union to raise the dispute nor there is any resolution in favour of said Shri U. K. Nair to represent the workmen before the appropriate authority or the Tribunal. Be that as it may, the letter dated 7-7-2017 addressed by the United Bargemen's Association to the Labour Commissioner at Exh. 22 does not state that they have been authorised by 190 workmen of the Party II(1) to raise the dispute. They have however produced a letter dated 30-11-2015 at Exh. 29 on the subject 'forwarding of crew continuity date' of Masters, Drivers, Sukani and Oilmen showing date of joining and last continuity date. In the said list, there are about 26 Masters, 28 Sukanis, 29 Drivers and 28 Oilmen, which are about 111 in number. If the said list is to be believed, it is not understood how the Party I claim that there are 190 workmen working for the Party II(1). The Party I have produced the failure report alongwith written arguments, however no reference is made about the number of workmen engaged by Party II(1) in the said report nor the letter dated 6-7-2017 by the barge crew addressed to the appropriate authority is produced.

13. The Party I have asserted that they have been illegally refused employment w.e.f. 1-7-2017. The Party I have produced on record the appointment letters of two workmen viz. Luis Rodrigues at Exh. 34 and Exh. 35 and Isaac Lucas

at Exh. 36. The clauses of the letter of appointment of Luis Rodrigues clearly show that his employment is contractual for 15 days on/off work pattern, commencing from 1-11-2015 till date of the cargo barge being in operation for commercial trading or *till termination of agency services, whichever is earlier* and that as per clause 3 of Appendix I of terms and conditions, his appointment is on basis for a fix time period and he shall not make any other claims against the Agency or Principals over and above the wages agreed upon. The clauses of the letter of appointment of Isaac Lucas also clearly show that his employment is contractual for 15 days on/off work pattern, commencing from 1-11-2015 till date of the cargo barge being in operation for commercial trading or *till termination of agency services, whichever is earlier* and that upon completion and conclusion of contractual term of service or notice of termination, whichever is earlier, he is bound to disembark from the cargo barge.

14. The Appointment letters produced on record clearly show their employment is contractual for 15 days on/off work pattern till date of the cargo barges being in operation for commercial trading or till termination of agency services, whichever is earlier. The letter dated 6-7-2017 addressed by one Seby Barreto and 3 others at Exh. 32 to the President, United Bargemen's Association states that they have been forced to disembark from their barges owned by M/s. Vedanta Limited and that they have heard that Vedanta have changed the contractor and new contractor has been appointed. The failure report also shows that all barge crew members were appointed on contractual basis and that the contractual agreement of Party II(1) with the principal employer i.e. M/s. Vedanta Limited got expired on 30-6-2017. It therefore shows that the Party II(1) have not abandoned the crew abruptly during the subsistence of the agreement nor refused employment to them.

15. The above letters of appointment were duly acknowledged, read and understood and agreed to be followed by all crew members as there is no dispute that similar letters of appointment were also issued to other workers. There cannot be any quarrel that as an agency for crew management, the Party II(1) have no right to keep the crew on board beyond the valid contract, which expired on 30-6-2017. No other appointment letters with different terms and conditions, other than the above referred letters, have been produced on record. The letters of appointment show that upon conclusion of contractual term of service, they were bound to disembark from the cargo barges. No documents have been produced by the Party I

showing that the Party II(1) had subsisting contract after 30-6-2017. It is therefore Party I workmen cannot claim a lien over the employment once the agency services were terminated by the Principal employer. It is therefore the Party I workmen have failed to prove that there is illegal refusal of employment of their members with effect from 1-7-2017 by Party II(1) and that they are entitled for re-instatement of their services.

16. The Party I have also claimed that the Party II(1) had entered into various settlements with Goa Barge Owner's Association and the settlement dated 9-2-2007 is binding on Party II(1). It is also claimed that they have also entered into a settlement on 12-3-2015 under Section 12(3) read with Section 18(3) of the Industrial Disputes Act before the Commissioner, Labour and Employment between Sesa Sterlite Ltd. and Sesa Resources Ltd., representative of Party II(1) and Bargemen's Association wherein they have agreed that in case the agency abandons the crew abruptly without payment of wages, the management shall be under obligation to pay unpaid wages for the period of work done under the agency.

17. There is no dispute that such a Memorandum of settlement dated 12-3-2015 at Exh. 25 was entered into by the parties. Clause 4 of the said agreement states that if the contract agency abandons the crew abruptly without payment of wages to its crew, the management shall be under obligation to pay. Needless to mention, the management i.e. M/s. Sesa Sterlite Ltd. and M/s. Sesa Resources Ltd. have not been made parties to the reference as they are responsible for the payment of unpaid wages, if any. The claim of unpaid wages and other benefits from Party II(1) therefore is preposterous. In any event, the Party I have also not produced on record the details of their legitimate dues or the arrears payable to each of the 190 workmen. The letter dated 7-7-2017 at Exh. 22 make a reference to unpaid dues/settlement benefits and have claimed that precise details will be furnished to the Labour Commissioner. No such details have been produced on record. It is not clear what were the dues/benefits payable to the Party I workmen consisting of 190, even if it is considered that there were 190 workmen engaged by Party II(1).

18. The Party II(2) examined one Pradeep Mokhardkar, workmen at Sr. No. 38. He claims that he was employed with Party II(1) on their barges and that he was illegally terminated. He claimed that after reference was made by the appropriate Government, a group consisting of 81 workmen

was disassociated. He also claimed that the Party II(1) had employed 190 workmen from January, 2015 to operate its barges in Goa and they had put in uninterrupted service with Party II(1) from January, 2015 till date. He also stated that the Party II(1) was not issuing pay slips or the details/spilt up of wages and on enquiries learnt they were not paying full wages to the workers from 1995 including pay scales, etc. It is not understood how the above witness is claiming unpaid dues from 1995 when he claimed that the Party II(1) had employed the workmen from January, 2015. He has also not given any details of unpaid dues claimed from the Party II(1). The evidence of the above witness therefore is of little use in support of claim of the Party I workmen.

19. The failure report clearly points out that Party II(1) have neither refused employment to the barge crew nor they are liable to pay any dues. The Party I have produced on record a letter dated 15-12-2016 at Exh. 33 addressed by United Bargemen's Association to the Party II(1), wherein they have referred to the letter of the Party II(1) by which it is stated that they have made payment to the crew members inclusive of all the allowances, however it claimed that bonus was not paid as paid to M/s. Vedanta Barge crew (Sesa Goa). Nonetheless, no such details have been produced on record including the amounts due. The reliance placed by Party I on the above citations therefore pales into insignificance. It is therefore the claim of the Party I workmen that they have not been paid legitimate dues or the benefit cannot be accepted. The Party I having failed to prove that the Party II(1) have refused employment w.e.f. 1-7-2017 and that the same is illegal and unjustified, they are not entitled either for reinstatement in services with full back wages or continuity in service. It is therefore the above issues are answered accordingly.

20. In the result, I pass the following:

ORDER

- (i) The Reference is answered against the Workmen/Party I.
- (ii) No order as to costs.
- (iii) Inform the Government accordingly.

Sd/-
(Vincent D'Silva)
Presiding Officer,
Industrial Tribunal and
Labour Court.

Department of Law & Judiciary

Law (Establishment) Division

Order

No. 2/65/2016-LD(Estt)/99

Ms. Soniya Sidhyesh Halarnkar presently posted as Civil Registrar-cum-Sub-Registrar (H.O.) is hereby directed to hold the additional charge of District Registrar, North Goa with immediate effect until further orders, thereby relieving Shri Suraj Vernekar, Civil Registrar-cum-Sub-Registrar from the additional charge of District Registrar, North.

By order and in the name of the Governor of Goa.

Amir Y. Parab, Under Secretary (Law-Estt.).

Porvorim, 15th January, 2020.

Corrigendum

No. 2/65/2016-LD(Estt)/100

In the Government Order No. 2/65/2016-LD(Estt)/2430 dated 27-12-2019, the row at Sr. No. 5 may be replaced and read as under:

5.	Ms. Soniya Sidhyesh Halarnkar	Jt. Civil Registrar-cum-Sub-Registrar-I, Bardez	C.R.S.R., (H.O.), vice Shri Mahesh Prabhu Parrikar transferred. The pay and allowances of Ms. Soniya Sidhyesh Halarnkar, Civil Registrar-cum-Sub-Registrar posted in the Office of State Registrar-cum-Head of Notary Services, Panaji-Goa shall be drawn against the vacant post of Jt. Civil Registrar-cum-Sub-Registrar, O/o of the District Registrar (North) w.e.f. 01-01-2020.
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The name at Sr. No. 1 "Shri Mahesh Parrikar" to be read as "Shri Mahesh Prabhu Parrikar" and also the name at Sr. No. 3 "Shri Tushant Kunkolienkar" to be read as "Shri Tushan Kunkolienkar".

The rest of the contents of the above order shall remain unchanged.

Amir Y. Parab, Under Secretary (Law-Estt.).

Porvorim, 15th January, 2020.

Department of Panchayati Raj and
Community Development

Directorate of Panchayats

Notification

No. 19/16/DP/Results/2020

In pursuance of sub-section (8) of Section 7 of the Goa Panchayat Raj Act, 1994 (Goa Act 14 of 1994) read with sub-rule 58 of the Goa Panchayat and Zilla Panchayat (Election Procedure) Rules, 1996, it is hereby notified for the information of the public that the persons specified in column No. 3 of the Scheduled appended hereto have been duly elected as member of the Panchayat mentioned in the corresponding entry in column No. 2 from the

ward shown against the name in column No. 4 of the said Scheduled in the election held on 06-01-2020.

SCHEDULE

Sr. No.	Name of Village Panchayat	Name and address of elected members	Ward No.
1.	V. P. Telaulim, Salcete	Sabastio Rebello, R/o. H. No. 62, First Daddio, Telaulim, Navelim, Salcete-Goa	I (General).

By order and in the name of the Governor of Goa.

Narayan Gad, Director & ex officio Joint Secretary (Panchayats).

Panaji, 16th January, 2020.

Department of Personnel

—
Order

No. 13/16/2015-PER(A)/197

- Read: 1) Order No. 13/16/2015-PER (A)/2989 dated 19-11-2018.
2) Order No. 13/16/2015-PER (A)/3219 dated 21-11-2019.

In partial modification of order at Sr. No. 2 of the preamble, the Governor of Goa is pleased to extend the contractual appointment of Shri P. Mathew Samuel, IAS (Retd.), Secretary of Goa Lokayukta and Director General, Goa Institute of Public

Administration and Rural Development (GIPARD) for a further period of one year w.e.f. 01-11-2019 to 31-10-2020 on the same terms and conditions as per order read in the preamble at Sr. No. 1 above.

The extension is also subject to termination without assigning any reasons at any time during the period of extension.

This issues with approval of the Government.

By order and in the name of the Governor of Goa.

Maya Pednekar, Under Secretary (Personnel-II).

Porvorim, 14th January, 2020.

Order

No. 6/10/2017-PER/Part/212

On the recommendation of the Goa Services Board, the Governor of Goa is pleased to order the transfer and posting of the following Officers of Goa Civil Service, in public interest, with immediate effect:-

Sr. No.	Name and present posting of the officer	Posted as
1.	Shri Gurudas P. Pilarnekar, Director of Art & Culture	Additional Inspector General of Prisons with additional charge of Superintendent of Jails.
2.	Shri Siddhivinayak S. Naik, Additional Inspector General of Prisons	Director of Civil Supplies and Consumer Affairs with additional charge of Member Secretary, Goa Kala Academy.
3.	Shri Sagun Velip, Director of Civil Supplies and Consumer Affairs	Director of Art & Culture.
4.	Shri Raju Gawas, Director (Administration), Electricity Department	Commissioner of Labour and Employment.
5.	Shri Jayant G. Tari, Commissioner of Labour and Employment	Director (Administration), Electricity Department.

The officers shall complete handing over and taking over process with immediate effect and submit compliance.

By order and in the name of the Governor of Goa.

Shashank V. Thakur, Under Secretary (Personnel-I).

Porvorim, 16th January, 2020.

Department of Public Health

—
Order

No. 4/1/2006-II/PHD/223

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/11/30(3)/12/299 dated 24-12-2019,

Government is pleased to promote Dr. Jinendra Kumar R., Assistant Professor to the post of Associate Professor in the Department of Neuro-surgery in Goa Medical College and Hospital, Bambolim on regular basis in the Level 11 of Pay Matrix and other allowances to be fixed as per rules with immediate effect.

The promotion is made against the vacancy occurred due to resignation tendered by Dr. Xavier George Kocherry, Associate Professor vide Order No. 2/18/2006-II/PHD dated 29-07-2013, which has been subsequently revived vide Order No. 4/1/2018-II/PHD/1194 dated 14-08-2019.

By order and in the name of the Governor of Goa.

Trupti B. Manerkar, Under Secretary (Health).

Porvorim, 16th January, 2020.

Order

No. 4/20/2002-II/PHD/PF/224

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/11/30(1)/99/300 dated 24-12-2019,

Government is pleased to promote Dr. Milind Mohan Karapurkar, Assistant Lecturer to the post of Lecturer in the Department of Biochemistry in Goa Medical College and Hospital, Bambolim on regular basis in the Level 11 of Pay Matrix and other allowances to be fixed as per rules with immediate effect.

The promotion is made against the vacancy occurred due to promotion of Dr. Jano Zore, Lecturer to the post of Assistant Professor in the Department of Biochemistry vide Order No. 4/20/2002-II/PHD/PF/5027 dated 07-02-2019.

By order and in the name of the Governor of Goa.

Trupti B. Manerkar, Under Secretary (Health).

Porvorim, 16th January, 2020.

Order

No. 44/21/2017-I/PHD/Part III/128

On the recommendation of Goa Public Service Commission conveyed vide their letter No. COM/II/12/24(1)/19/295 dated 24-12-2019, the Government is pleased to declare the following Doctors under Directorate of Health Services as having satisfactorily completed their probation period of two years with effect from the date indicated against their names and to confirm them in the post of Medical Officer with effect from the date of completion of their probation period:-

Sr. No.	Name of Doctor	Date of joining in regular service as Medical Officer	Date of completion of probation period
1.	Dr. Punam Ramdas Bandodkar	10-12-2012	09-12-2014.
2.	Dr. Ravin Noel Do Rosario Rego Liana	01-12-2012	30-11-2014.
3.	Dr. Shradha Suvas Kamat alias Surlakar	27-12-2012	26-12-2014.
4.	Dr. Sneha Gurudas Kamat	08-10-2012	07-10-2014.
5.	Dr. Vijayata Bhanudas Naik	01-11-2012	31-10-2014.

By order and in the name of the Governor of Goa.

Swati A. Dalvi, Under Secretary (Health).

Porvorim, 16th January, 2020.

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Department of Town & Country Planning
Office of the Chief Town Planner (Administration)

Order

No. 17/01/TCP-UD/2015-16/Part/85

Read: Order No. 17/01/TCP-UD/2015-16/Part/3585 dated 31-12-2019.

In partial modification to the order dated 31-12-2019 read at preamble, the following revision in the transfer order of officers mentioned in order dated 31-12-2019 is issued in public interest as detailed below:

Sr. No.	Name of the officer and designation	Posting as per order dated 31-12-2019	Proposed posting
1.	Shri Vinod Kumar Chandra, Town Planner	Member Secretary, Mormugao PDA, Vasco	Town & Country Planning Department (HQ), Panaji.
2.	Shri Sandip P. Surlakar, Dy. Town Planner	Town & Country Planning Department, Ponda Taluka office	Town & Country Planning Department, Ponda Taluka office/Mormugao Taluka office
3.	Shri K. Ashok Kumar, Dy. Town Planner	Member Secretary, South Goa PDA, Margao	Member Secretary, Mormugao PDA, Vasco.
4.	Shri Zaidev R. Aldonkar, Dy. Town Planner	Town & Country Planning Department (HQ), Panaji/ /Mormugao Taluka office (additional charge)	Town & Country Planning Department, Canacona/Quepem Taluka office.

The officers are hereby directed to join their new place of posting with immediate effect without availing joining time.

The officers shall complete handing over and taking over process with immediate effect and submit compliance.

By order and in the name of the Governor of Goa.

Daulat Hawaldar, IAS, Comm./Secretary (TCP).

Panaji, 13th January, 2020.

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